IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO.5/2003
WITH CIVIL APPLICATION NO.150/2003
AND
APPEAL UNDER ARBITRATION ACT NO.6/2003
WITH CIVIL APPLICATION NO.174/2003

The Registrar,
Goa University, Taleigao Plateau,
Taleigao, Goa. ... Appellant.

V/s.

Dempo Engineering Services,
Dempo House, Campal, Panaji, Goa. ... Respondent.

Mrs. A.A. Agni, Advocate for the appellant.

Mr. Sudin M.S. Usgaonkar, Advocate for the respondent.

CORAM : F.I. REBELLO, J

DATE : JULY 24, 2003.

ORAL JUDGMENT :

Admit. The respondent waives service. Heard forthwith.

A few facts, be set out as under :

The arbitration proceedings commenced under the Act of 1940. An award came to be passed. The award was filed in the Court. The appellant herein raised objections as to jurisdiction. That was rejected on the ground that the Court had no jurisdiction, obviously based on the Judgment of this Court in the case of

Reshma Constructions vs. State of Goa, 1998(1) GLT 311. Thereafter, the Apex Court has taken a similar view in Thyssen Stahlunion GMBH vs Steel Authority of India Ltd. A revision preferred before this Court against that order was rejected.

2. After that, the appellant herein filed an application under Section 34 and sought to condone the delay under Section 14 of the Limitation Act by contending that the proceedings taken in wrong Court of competent jurisdiction should be excluded. That has been rejected by this Court on the ground that there is power to condone the delay in view of the Judgment cited therein. In **H. M. P. Engineering Ltd. & others, vs Rallis India Ltd. & others,** in Arbitration Petition (L) No.458/2002 decided on February 21st, 2003 after considering the Judgment in Union of India vs Popular Construction Co. (2001) 8 S.C.C. 470, this Court has taken a view that the provisions of Section 14 are attracted and considering that it is exclusion, and not extension of time. The view in **Pushpa P. Mulchandani and others vs. Admiral Radhakrishinan Tahilani (Retd) and others,** 2000 (4) Mh.L.J. 819 held to be no longer good law. In the light of that, the order of the District Court on that count, is liable to be set aside itself.

However, that by itself would not solve the issue as in the instant case clearly pursuant to the Judgment of the Apex Court in **M/s. N.S. Nayak & Sons vs. State of Goa,** 2003(4) SCALE 622, the Apex Court has explained the Judgment in Thyssen Stahlunion GMBH Vs. Steel Authority of India Ltd.

Considering that the challenge to the Award was made under the Act of 1940, remedy against it would be under the Act of 1940.

The objections originally filed before the Civil Judge, Sr. Division, Panaji to the Award will have to be dealt by that Court.

With the above observations, the appeals are allowed. Order of the learned Addl. District Court is set aside.

F.I. REBELLO, J.

ssm.